Supreme Court of the United States

OCTOBER TERM

No. 436

PAULETTE BOUDREAUX RODRIGUE, ET AL
and
ELLA MAE DUBOIS DORE, INDIVIDUALLY, ETC.,
Petitioners,

versus

AETNA CASUALTY AND SURETY COMPANY, ET AL.
and
THE LINK BELT COMPANY, ET AL.,
Respondents.

SUPPLEMENTAL SPECIAL BRIEF ON BEHALF OF AETNA CASUALTY & SURETY COMPANY, ET AL. AND LINK BELT COMPANY, ET AL. RESPONDENTS.

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versus

AETNA CASUALTY and SURETY COMPANY, ET AL
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Respondents.

SUPPLEMENTAL SPECIAL BRIEF FILED ON BEHALF OF RESPONDENTS IN COMPLIANCE WITH ORDER OF COURT

MAY IT PLEASE THE COURT:

This is a supplemental brief responding to the Court's query:

> "'In light of the cases in this Court relating to the limits of admiralty jurisdiction, such as *Phoenix Construction Co. vs. The Steamer Poughkeepsie,* 212 U.S. 558, affirming 162 F. 494 (1908 D.C. S.D. N.Y.), and in light of the language and legislative history of the Outer Continental Shelf Lands Act, does the Death

on the High Seas Act apply to these accidents?" See *Pure Oil Co. v. Snipes,* 293 F.2d 60 (C.A. 5th Cir. 1961).'

In essence, the Court has requested a discussion of the applicability of two lines of jurisprudence referable to accidents on stationary platforms, (1) those cases arising out of accidents occurring on territorial waters of a state and (2) those cases arising out of accidents occurring on the high seas. The first classification is represented by the case of *Phoenix Construction Company, supra,* and the second line of jurisprudence is represented by the *Pure Oil Company v. Snipes, supra.*

I. *Extension of State Land Jurisprudence.*

The first line of jurisprudence involves a dispute between conflicting jurisdictions, the Federal *Admiralty* and *Maritime* jurisdictions and the state law jurisdiction on the land or extensions of the land. The *Phoenix Construction Company case, supra,* has as its rationale not that the accident occurred on a structure affixed to the bottom of a river, but rather that the structure was an indispensable part of land-based operations similar to those cases involving the land based operations carried out from wharves, piers, bridges, etc. Note in the *Phoenix Construction Company* case, *supra,* the fact that the pipe borings were made for the purpose of locating the site of an aqueduct to be built under the Hudson River to carry water from the Catskills to the City of New York. The fact that this was an artificial structure approximately eight hundred

(800) feet from the nearest point of shore is not the distinguishing factor in this line of jurisprudence.

The later decisions of the Federal court establish that the crucial factor in the *Phoenix* case is the fact that the operations of which the structure was a part, was not considered a traditional subject matter of Maritime jurisdiction. As an example of this the Court should consider the case of *United States v. The John R. Williams,* 144 F.2d 451 (2nd Cir. 1944), decided by Judge Hand which held Maritime and Admiralty jurisdiction inapplicable to a suit filed by a telephone company for damage to its submarine cable as a result of action by a vessel. As indicated by Judge Hand, the Federal Maritime law at the time would have resulted in Admiralty jurisdiction "if the cable had been in fault and injured the tug"; but in the situation involving damage to the cable as a result of negligence by the tug, the *Phoenix Construction Company* case, *supra,* was controlling and jurisdiction rejected. Thus, jurisdiction depended, not upon connexity between the structure and the river bed but rather upon the local nature of the work being performed from the platform or as in the *John R. Williams* case, *supra,* the local nature of the submarine cable.

In the case at bar there is no question but that local concern or state law jurisdiction is of no concern since the Outer Continental Shelf Lands Act specifically limits the state law jurisdiction to three marine leagues from shore.

Section 1301 B defines the boundaries of states on the Gulf of Mexico as follows:

> "(b) The term 'boundaries' includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico . . . or as heretofore approved by the Congress, or as extended or confirmed pursuant to Section 1312 of this Title *but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more* than . . . three marine leagues into the Gulf of Mexico;
>
> See also U. S. v. States of La., Tex., Miss., Ala. and Fla., Ala., Fla., La., Miss. & Tex. 1960, 80 S.Ct. 961, 363 U.S. 1.

Therefore, the cases represented by the *Phoenix Construction Company* decision, *supra,* are not applicable and cannot be the basis of holding that platforms on the high seas are extensions of the land, because the problem of local concern is not present with reference to accidents occurring on stationary platforms on the Outer Continental Shelf, by definition of Congress. Clearly in this case, there is involved a platform on the Outer Continental Shelf which by definition is not part of the territories of any state, and is not of any local concern.

II. *Traditional Application of Maritime Jurisdiction on Fixed Structures.*

The United States Supreme Court in various decisions hereinafter discussed, has applied maritime jurisdiction to structures affixed to the bottom of navigable waters where federal concern rather than local concern was of paramount importance. In *United States v. Evans,* 25 S.Ct. Rep. 46, 195 U.S. 361 (1904), the Court was presented with a libel in rem against a British vessel for destruction of a beacon. The beacon stood fifteen (15) or twenty (20) feet from the channel of Mobile River or Bay in fifteen (15) feet of water and was built on piles driven firmly into the bottom.

> "There is no question that it was attached to the realty. . . ."

In spite of this fact, the district court declined jurisdiction. Justice Holmes quotes the following excerpts from various prior decisions, pointing up the fact that the beacon's connexity with the river bed was not of crucial importance.

> "The precise scope of admiralty jurisdiction is not a matter of obvious principle or of very accurate history. As to principle, it is clear that if the beacon had been in fault, and had hurt the ship, a libel could have been maintained against a private owner, although not in rem."

* * * *

> "But, as has been suggested, there seems to be no reason why the fact that the injured property was afloat should have more weight in determining the jurisdiction than the fact that the cause of the injury was."
>
> * * * *
>
> "And again, *it seems more arbitrary than rational to treat attachment to the soil as a peremptory bar, outweighing the considerations that the injured thing was an instrument of navigation, and no part of the shore, but surrounded on every side by water, a mere point projecting from the sea.*"

In reaching the conclusion that this particular structure in the water did not fall within the rule of extension of the land, Justice Holmes used the following language:

> "In the case of The Plymouth there was nothing maritime in the nature of the tort for which the vessel was attached. The fact that the fire originated on a vessel gave no character to the result, and that circumstance is mentioned in the judgment of the court, and is contrasted with collision, although the consideration is not adhered to as the sole ground for the decree. It has been given weight in other cases. Campbell v. H. Hackfeld & Co., 62 C. C. A. 274, 125 Fed. 696; Queen v. London Court Judge (1892) 1 Q.B. 273, 294; Benedict, Admiralty, 3d ed. Sec. 308. Moreover, the damage was done wholly upon the

mainland. It never has been decided that every fixture in the midst of the sea was governed by the same rule. The contrary has been supposed in some American cases (The Arkansas, 5 McCrary, 364, 17 Fed. 383, 387; the F. & P. M. No. 2, 33 Fed. 511, 515), and is indicated by the English books cited above. It is unnecessary to determine the relative weight of the different elements of distinction between The Plymouth and the case at bar. *It is enough to say that we now are dealing with an injury to a government aid to navigation from ancient times subject to the admiralty — a beacon emerging from the water — injured by the motion of the vessel, by a continuous act, beginning and consummated upon navigable water, and giving character to the effects upon a point which is only technically land, through a connection at the bottom of the sea. In such a case jurisdiction may be taken without transcending the limits of the Constitution or encountering The Plymouth or any other authority binding on this court.* As to the present English law, see The Uhla, L. R. 2 Adm. & Eccl. 29, note; The Swift (1901) P. 168."

Thus the mere fact that a fixed structure attached to the seabed is involved, is not sufficient to exclude accidents occurring on the platform from Maritime jurisdiction. On the contrary, as stated by Justice Holmes,

> "It never has been decided that every fixture in the midst of the sea was governed by the same rule. The contrary has been supposed in some American cases ... ., and is indicated by the English books cited above."

In the *Evans* case, supra, Justice Holmes refused to consider what relative weight should be given to the different elements of distinction, i.e., aid in navigation, structure located without connection with the land, injury by the motion of a vessel, *a continuous act beginning and consummated over an area generally governed by Maritime Law.*

Of similar import, is the case of *Latta & Terry Construction Company v. British Steamship "Raithmoor"*, 36 S.Ct. Rep. 514, 241 U. S. 166. This case involved damage to an unfinished pier intended to support a government beacon. The pier was to have no physical connection with the shore. The Court, in applying maritime jurisdiction to the unfinished pier, through Justice Hughes used the following language in reference to the *Evans* case, *supra*, with approval:

> "It is enough to say that we now are dealing with an injury to a government aid to navigation from ancient times subject to the admiralty. — a beacon emerging from the water, injured by the motion of the vessel, by a continuous act beginning and consummated upon navigable water, and giving character to the effects upon a point which is only technically land, through a connection at the bottom of

the sea.' (Id. p. 367.) It was suggested in the concurring opinion of Mr. Justice Brown (Id. p. 368) that the decision practically overruled the earlier cases, and that it recognized the principle of the English statute extending the jurisdiction of the admiralty court to 'any claim for damages by any ship.' This consequence, however, was expressly denied in Cleveland Terminal & Valley R. Co. v. Cleveland S. S. Co. 208 U. S. 316, 320, 52 L. ed. 508, 512, 28 Sup. Ct. Rep. 414, 13 Ann. Cas. 1215. In that case it was decided that the admiralty did not have jurisdiction of a claim for damages caused by a vessel adrift, through its alleged fault, to the center pier of a bridge spanning a navigable river and to a shore abutment and dock. Referring to The Blackheath, and drawing the distinction we have noted, the court said: *'The damage' (that is, in The Blackheath) 'was to property located in navigable waters, solely an aid to navigation and maritime in nature, and having no other purpose or function . . . . But the bridges, shore docks, protection piling, piers, etc.' (of the Cleveland Terminal Company) 'pertained to the land. They were structures connected with the shore and immediately concerned commerce upon land.* None of these structures were aids to navigation in the maritime sense, but extensions of the shore, and aids to commerce on land as such.'"

Additionally, in the case of *Doullut & Williams Co. vs. United States,* 45 Sup. Ct. Rep., 411, 268 U. S. 33, the Court was faced with a determination of whether or not a cluster of pilings located in a river was within Admiralty and Maritime jurisdiction as traditionally interpreted under the decisions mentioned above. The pilings were in sixteen (16) feet of water and extended approximately twenty-five (25) feet above the water and had no physical connection with the shore. They were apparently mainly used for tying vessels during bad weather and when the Mississippi River was on the rise. Part of the allegations which were quoted by the Court as the factual base for the decision is:

> "At no time do any vessels use said pile cluster to load or unload cargo or passengers, said pile cluster being incapable of so being used, and incapable of being used for any commerce on land."

The Court used the following language in holding that this set of pilings, though a fixed structure on the river bed, was within Admiralty jurisdiction:

> "The damaged pilings constituted no part or extension of the shore, as wharves, bridges, and piers do. Although driven into the bottom of the river, and attached in that way only to the land, they were completely surrounded by navigable water, and were used exclusively as aids to navigation. We think injuries to them by a ship come fairly within the principle approved by The Blackheath, 195 U. S.

361, 25 S. Ct. 46, 49 L. Ed. 236, and The Raithmoor, 241 U. S. 166, 36 S. Ct. 514, 60 L.Ed. 937. See Hughes on Admiralty (2d Ed.) Sec. 100.

"The District Court erred in denying jurisdiction, and its decree must be reversed."

Thus, it would appear that the Courts have given some consideration to the physical contact of a structure with the land; but, it is also clear that many other factors enter into the ultimate decision whether a structure is within the Maritime jurisdiction. It is apparent that connection with land base commerce which makes the operation of local concern, is one of the crucial factors and thus piers used for loading and unloading of vessels are held to be extensions of the land even though the loading and unloading process is work which is Maritime in nature.

With this in mind, it is submitted that the work being performed on the Outer Continental Shelf is not of local concern. It is not a part of an operation such as existed in the *Phoenix Construction Company* case, concerning the movement of water from one land area to another. It is not similar in nature to the loading and unloading of vessels from a pier which becomes a part of the storage of goods and land based commerce. On the contrary, it is an operation which at most, has some supply connection with the land, but otherwise is begun and completed on the high seas. Of even greater importance is the fact that the areas here involved - including the platforms - is, as shown by the Submerged Lands Act, of major federal concern.

Moreover, even if it is assumed that the drilling of oil wells have some connection with the land merely because supplies are shipped from the land to these locations on the high seas, it must still be recognized that Congress can and has brought this within Admiralty and Maritime jurisdiction under the provisions of the Outer Continental Shelf Lands Act. In this connection, the Court's attention is called to the cases involving the Admiralty Extension Act which have included certain accidents occurring on extensions of the land in Admiralty jurisdiction. As stated by the courts, Congress cannot broaden its maritime jurisdiction as granted under the Constitution, but it can exercise its power to the fullest and thus include certain areas which the Courts had previously refused to place traditionally within the Admiralty jurisdiction. Without covering extensively this jurisprudence, the court in the case of *United States v. Matson Nav. Co.*, 201 F.2d 610, commenting on the constitutionality of the Admiralty Extension Act, stated as follows:

> "In his classic discussion and analysis of the admiralty law, Justice Story rejects as limitations to the constitutional scope of admiralty jurisdiction of federal courts in the United States the admiralty jurisdiction exercised by the English admiralty courts at the time of the American Revolution or at the time of the emigration of our ancestors from England. Nor, he continues, is the scope of the admiralty jurisdiction conferred by the Constitution confined to the jurisdiction which was actually exercised in the English colonies which joined

to form the United States, since the admiralty jurisdiction of the Colonies was limited by the grants of the English masters. He suggests rather that the Constitutional grant must be liberally construed to encompass all that can be included in the ancient laws, customs, and usages of the sea, not only in England before the restrictive statutes were passed, but also in the maritime courts of all the other powers of Europe. *Moreover, he points out that the grant of jurisdiction not only uses the word 'admiralty' but also the word 'maritime', and must there include 'jurisdiction of all things done upon and relating to the sea . . .'*

"Damage to a land structure by a ship, historically and through experience and usage, has been generally made cognizable in foreign maritime courts. The jurisdiction of the English admiralty courts over such torts, after centuries of prohibition by the kings, common law courts, and Parliament, was restored in 1861. And injuries to shore structures by ships have long been recognized as maritime torts by the Continental courts. As the Supreme Court said in The Blackheath, supra, 195 U. S. at page 365, 25 S.Ct. at page 47, 49 L.Ed. 236, 'there seems to be no reason why the fact that the injured property was afloat should have more weight in determining the jurisdiction than the fact that the cause of the injury was." . . .

"The Supreme Court upheld the Act in Richardson v. Harmon, supra, even though it considered the Act as an extension of admiralty jurisdiction to theretofore non-maritime torts. Cf. The Plymouth, supra. 'The authority of the Congress to enact legislation of this nature was not limited by previous decisions as to the extent of the admiralty jurisdiction. We have had abundant reason to realize that our experience and new conditions give rise to new conceptions of maritime concerns. These may require that former criteria of jurisdiction be abandoned in discarding the doctrine that the admiralty jurisdiction was limited to tidewaters.' Detroit Trust Co. v. Barlum S. S. Co., supra, 293 U.S. at page 52, 55 S. Ct. at page 41, 79 L.Ed. 176.

"We conclude that the Admiralty Extension Act of 1948, 46 U.S.C.A. § 740, was a constitutional exercise of the power of Congress under the Constitution. See American Bridge Co. v. The Gloria O, D.C., 1951, 98 F.Supp. 71."

In view of the above and the numerous other cases upholding the constitutionality of the Admiralty Extension Act, and particularly in view of Judge Story's language, there should be no doubt that the platform structures on the Outer Continental Shelf, some of which are fixed and some of which are movable — in the cases at bar fixed platforms are involved — are within the constitutional grant to Congress of

'jurisdiction of all things done upon and relating to the sea."

There appears to be a clear statement by Congress that the platforms are to be covered under the Admiralty and Maritime grant of jurisdiction under the Constitution. In this connection, the Court's attention is directed again to the quoted portion of Title 43, Section 1301 (b) which limits a state's territories to three (3) marine leagues to the Gulf of Mexico. In the cases at bar, the accidents occurred beyond the three marine league boundary.

In Title 43, Section 1333 (a) (1), Congress has stated:

> "The constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the Outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon . . ."

Title 43, Section 1333 (b) provides:

> "The United States District Courts shall have original jurisdiction of cases and controversies arising out of or in connection with any operations conducted on the Outer Continental Shelf for the purpose of exploring for, developing, removing or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the Outer Continental Shelf."

Congress recognizing the importance of these structures from a navigational or obstruction to navigation standpoint, provided in Section 1333 (e):

> "(1) The head of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the islands and structures referred to in subsection (a) of this section or on the waters adjacent thereto, as he may deem necessary."
>
> "(2) The head of the Department in which the Coast Guard is operating may mark for the protection of navigation any such island or structure. . . .
>
> "(f) The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is *extended to* artificial islands and fixed structures located on the Outer Continental Shelf."

In conclusion, it is submitted to the Court that: (a) there is ample jurisprudential authority to apply admiralty and maritime jurisdiction to accidents occurring on stationary platforms located on the Outer Continental Shelf that are entirely surrounded by water, that are objects of navigational control, that because of their situs, are not of local state concern and are

of paramount federal concern and (b) with respect to stationary platforms located on the Outer Continental Shelf, the Federal Congress has specifically enacted a law which makes federal jurisdiction and laws applicable to these platforms.

Pure Oil Company vs. Snipes, 293 F.2d 60 (5th Cir. 1961), upheld this position that general maritime law was applicable to a stationary platform located in the Outer Continental Shelf.

> "This is so because the Outer Continental Shelf Lands Act itself reveals that when it is federal, not adjacent state, law to apply, Congress adopted the maritime standards. At least two specific items evidence this. This evidential material serves a dual role: in demonstrating that (1) Congress chose the maritime law as the federal law it proves also that (2) federal, not state, law was to apply.
>
> "First, Congress committed to the agency traditionally charged with regulation and enforcement of maritime matters the duty and 'authority to promulgate and enforce * * * regulations with respect to * * * safety equipment, and other matters relating to the promotion of safety of life and property * * *' on the artificial islands, structures or waters adjacent thereto. The agency specifically named was the Coast Guard. Contrary to the contentions of Pure, this statutory obligation and authority transcends the mere marking of the structures

either as an aid to navigation or the warning of its presence as an obstruction. See also Sec. 1333 (e) (2) and (f). In accordance with the statutory mandate the Commandant of the Coast Guard has promulgated extensive regulations which reflect a view that whether manned or unmanned, fixed or submersible, these oil well drilling structures located in the midst of the high seas present substantially all of the perils of the seas and are therefore to be regulated as such. One such hazard expressly recognized is the likelihood of falling on to the deck or into the ocean. This elaborate administrative establishment to assure reasonable safety to all persons working on such platforms without particular regard to their status as an employee, independent contractor, employee of an independent contractor, or service personnel reflects a dual congressional determination. The first is that as the hazards and risks are essentially maritime, it is appropriate that standards of safety be those imposed by the maritime law with policing and enforcement left to a traditional maritime agency. And second, it was a determination that this matter could not adequately be left to the adjacent states either in the creation of the underlying substantive standards or in their enforcement. Of course enforcement and effectuation of such congressional policy makes the question of sanctions, including that of civil tort liability, of like congressional concern.

"The second indicia found in the terms of the Outer Continental Shelf Lands Act itself is its express adoption of the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. Sec. 901 et seq., as the basis of compensation for death or disability of an employee. 43 U.S.C.A. Sec. 1333 (c). This is of significance for several reasons. One has to do with general safety conditions showing again the congressional concern for a federal policy. The other bears directly on the subject at hand & a suit by an injured employee against a third party."

* * * *

"Congress knew from long experience the desirability — if not the constitutional necessity — of a substantial uniformity in dealing with matters maritime. It runs counter to the whole purpose of the Act to assume that Congress meant a matter of such importance as safety of life and limb should be left to the shifting policies of adjacent states."

Following the *Pure Oil Company* case was *Movible Offshore Company vs. Ousley,* 346 F.2d 870 (5th Cir. 1965), which affirmed the determination that maritime law was applicable to a stationary platform located on the Outer Continental Shelf. In the wake of *Ousley* came *Ocean Drilling and Exploration Company vs. Berry Bros. Oilfield Service,* 377 F.2d 511 (5th Cir. 1967), a landmark decision in which the Court held that federal maritime law applied to stationary platforms, that there could be no right of tort indemnity

against the employer of the injured plaintiff, and that the *Ryan* doctrine was not applicable on stationary platforms. This Court had an opportunity on application for Writs of Certiorari in this case, to review the jurisprudential rule of maritime law application to stationary platforms, denied the writs (389 U.S. 849) and inferentially approved this rule of law.

Judicial reliance on this rule of law continued as exemplified by the case of *Loffland Brothers Company vs. Roberts*, 386 F.2d 540 (5th Cir. 1967), which again held unequivocally that maritime law applied to stationary platforms irrespective of whether the injury was consummated on the platform or on the water. The Court stated as follows on Page 545:

> "In Pure Oil Co. v. Snipes, 293 F.2d 60 (5 Cir. 1961) this Court carefully reviewed the Outer Continental Shelf Lands Act and concluded that Congress deemed the hazards presented by the offshore drilling platforms to be maritime in nature. We therefore held that under the Act federal maritime law was to apply to torts occurring on these offshore platforms. That decision has been consistently followed by this Court. See, e.g., Movible Offshore Co. v. Ousley, 346 F.2d 870 (5 Cir. 1965); Ocean Drilling & Exploration Co. v. Berry Bros. Oilfield Service, Inc., 377 F.2d 511 (5 Cir. 1967). Loffland seeks to distinguish Snipes on the ground that the plaintiff there fell from the platform to the sea. It argues that traditionally the location of the tort has determined whether or not

maritime law applied. Since Roberts' injury was consummated solely on the platform, maritime law does not apply. We disagree. In Snipes the Court noted that the historical tests for determining whether a tort was within the admiralty jurisdiction of the federal courts were not applicable in cases involving torts occurring on offshore drilling platforms since Congress had directed in the Outer Continental Shelf Lands Act that maritime law be applied. 293 F.2d at 65-66. See Movible Offshore Co., supra; Cf. Magnolia Towing Co. v. Pace, 378 F.2d 12 (5 Cir. 1967). Thus, it is clear that the decisions of this Court require the application of maritime law to this case. We can find no valid reasons to depart from the rationale and holdings of those decisions, and we decline to do so."

Writs for Certiorari were applied for to this Court and denied. 88 S.Ct. 778 (1968).

This Court on two separate occasions within the last two years has tacitly approved the rule that maritime law applies to stationary platforms.

Were this Court to hold in these two cases presently under consideration that the Death on the High Seas Act did not apply, it would have to find that maritime law has no application on stationary platforms and would be reversing the cases previously referred to, leaving this field of law in chaotic turmoil.

The uniformity of law which so tenaciously has been sought by Congress in its legislation - the Death on the High Seas Act, the Jones Act, the Extension of Admiralty Act, the Outer Continental Shelf Lands Act - would be annihilated, and the law to be applied would be the variant laws of fifty states. An additional problem lies in that the Outer Continental Shelf Lands Act provides that a determination of what state law shall be adopted will be predicated on the Federal Executive projecting state boundaries into the Shelf; such projection has not been accomplished and therefore there can be no determination of what state law is to be adopted in these two cases. See 43 U.S.C. Section 1331 (a) (2).

This Court has emphasized not only uniformity in law but uniformity in ultimate result. *Reed vs. Steamship Yaka,* 83 S.Ct. 1349, 373 U.S. 410 (1963). If this Court were to hold that maritime law does not apply to stationary platforms, incongruous results would flow; these cases at bar illustrate it: in the *Rodrigue* case the deceased died when he hit the drilling floor on the stationary platform, and were the Court to hold the Death on the High Seas Act did not apply, some state law would apply with rules variant to the maritime law; in the *Dore* case, the deceased died when he hit a vessel tied alongside the platform, so the Death on the High Seas Act would apply.

The judiciary to this date has vitalized the Federal Congressional intent embodied on the Outer Continental Shelf Lands Act, by applying federal maritime uniform law to operations on the Outer Continental Shelf which are of paramount federal concern. This Court

is requested to explicitly ratify the jurisprudential rule which it previously tacitly approved that maritime law is to apply to stationary platforms in the Outer Continental Shelf.

CONCLUSION

(1) The jurisprudential rule exemplified by the *Phoenix* decision, of inapplicability of maritime jurisdiction to extensions of land located on state territorial waters involving operations of local concern are inapplicable to the cases at bar which deal with stationary platforms on the Outer Continental Shelf, completely surrounded by water and of exclusive federal concern.

(2) The Federal Congress enacted the Outer Continental Shelf Lands Act to provide exclusive federal jurisdiction and federal maritime law to these stationary platforms to ensure uniformity, safety in navigation and remedies to the personnel on these stationary platforms. The Fifth Circuit in at least four cases beginning with *Pure Oil Company vs. Snipes, supra,* has put into effect the Congressional intent by holding that maritime federal law is exclusive in this field and to this date this Court has tacitly approved this rule of law. In these two cases before the bar, this Court is requested to dispel all doubts, and give stability and uniformity to the law by affirming the

holding of the Fifth Circuit Court of Appeals cases that the Death on the High Seas Act is the exclusive remedy.

Respectfully submitted

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CERTIFICATE

This is to certify that I have this day mailed a copy of the above and foregoing Supplemental Special Brief to Mr. A. Deutsche O'Neal, Mr. Philip E. Henderson, Mr. Charles J. Hanemann, Jr., P. O. Box 590, O'Neal Building, Houma, Louisiana; Mr. George Arceneaux, Jr., 311 Goode Street, Houma, Louisiana; and Mr. Alfred S. Landry, Landry, Watkins, Cousin & Bonin, 211 East Main Street, New Iberia, Louisiana.

May ____, 1969